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Joint Committee on Taxation
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Chairman's Amendments to S. 1129

Statutory changes

(1) Provide that the line of business rules (sec. 414(r)) apply to the benefits test applicable to dependent care assistance plans under sec. 129(d)(7).

(2) Provide a delayed effective date for employees covered by a collective bargaining agreement. Thus, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of enactment of the bill, the amendments made to the section 89 nondiscrimination rules by the bill do not apply to employees covered by such an agreement in years beginning before the earlier of: (a) the date on which the collective bargaining agreement covering such employees terminates (determined without regard to any extension thereof on or after the date of enactment), or (b) January 1, 1993.

(3) In section 89(f)(4)(B) as amended by the bill (relating to separate operating units), delete the word "all".

(4) With respect to section 3(e) of the bill (relating to interpretation of the line of business rules): (a) replace "with respect to such guidelines" with "with respect to such section", and (b) provide that the rule in section 3(e) applies until the later of (i) the date specified in the guidelines referred to in section 3(e), or (ii) the first plan year beginning after the issuance of such guidance and the determination letter process referred to in the section.

(5) Provide that the bill's definition of leased employees is retroactive to the date the leased employee rules were first effective.

(6) In section 89(c)(2)(B) as amended by the bill, delete the parenthetical phrase "(determined on a weekly basis)".

(7) Section 89(c)(4) as amended by the bill is amended to read as follows: "Core Benefits.--For purposes of this section, the term 'core benefits' means--(A) comprehensive major medical benefits and (B) hospitalization benefits. At the election of the employer, such term may also include

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other benefits prescribed by the Secretary."

(8) Clarify the operation of the rules relating to differences in waiting periods. Under the bill, it is intended that if there are different waiting periods under the employer's health plans, then the group of employees eligible to participate after the satisfaction of such waiting period be nondiscriminatory. If that is not the case, then the taxable benefit of the highly compensated employees who are eligible to participate after satisfaction of the shorter waiting period includes the employer-provided benefit that relates to the period that causes the waiting periods to be discriminatory. For example, suppose an employer's plan generally has a waiting period of 60 days for core health coverage. This waiting period is waived for certain executives of the company. The taxable benefit of the executives includes the first 60 days of coverage.

(9) Staff is authorized to make other technical changes to the bill or the legislative history as necessary to conform to the intent of the bill.

Items to be clarified in legislative history

(1) Business travel insurance with a de minimis value is not subject to the section 89 nondiscrimination rules.

(2) Under the bill's definition of leased employees, clarify that the relevant factors in determining whether an individual is under the control of a service recipient may include: whether the service recipient (a) prescribes the individual's work methods, (b) supervises the individual, (c) sets the individual's working hours, and (d) sets the individual's compensation level.

(3) Provide that the notice requirement of new section 4980C is satisfied by a notice that contains the material required to be contained in the Summary Plan Description required under the Employee Retirement Income Security Act of 1974 (ERISA), if the notice is provided by the time required under the Internal Revenue Code. It is not intended that this is the only way the notice requirement can be satisfied.

(4) Clarify that in determining whether claimed lines of business are separate, one of the factors taken into account is the differences between the services provided and products produced by the different lines.